

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5  
OFFERED BY MR. BILIRAKIS**

Strike all after the enacting clause and insert the  
following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Help Efficient, Acces-  
3 sible, Low-cost, Timely Healthcare (HEALTH) Act of  
4 2003”.

**5 SEC. 2. FINDINGS AND PURPOSE.**

6       (a) FINDINGS.—

7           (1) EFFECT ON HEALTH CARE ACCESS AND  
8 COSTS.—Congress finds that our current civil justice  
9 system is adversely affecting patient access to health  
10 care services, better patient care, and cost-efficient  
11 health care, in that the health care liability system  
12 is a costly and ineffective mechanism for resolving  
13 claims of health care liability and compensating in-  
14 jured patients, and is a deterrent to the sharing of  
15 information among health care professionals which  
16 impedes efforts to improve patient safety and quality  
17 of care.

18           (2) EFFECT ON INTERSTATE COMMERCE.—  
19 Congress finds that the health care and insurance

1 industries are industries affecting interstate com-  
2 merce and the health care liability litigation systems  
3 existing throughout the United States are activities  
4 that affect interstate commerce by contributing to  
5 the high costs of health care and premiums for  
6 health care liability insurance purchased by health  
7 care system providers.

8 (3) EFFECT ON FEDERAL SPENDING.—Con-  
9 gress finds that the health care liability litigation  
10 systems existing throughout the United States have  
11 a significant effect on the amount, distribution, and  
12 use of Federal funds because of—

13 (A) the large number of individuals who  
14 receive health care benefits under programs op-  
15 erated or financed by the Federal Government;

16 (B) the large number of individuals who  
17 benefit because of the exclusion from Federal  
18 taxes of the amounts spent to provide them  
19 with health insurance benefits; and

20 (C) the large number of health care pro-  
21 viders who provide items or services for which  
22 the Federal Government makes payments.

23 (b) PURPOSE.—It is the purpose of this Act to imple-  
24 ment reasonable, comprehensive, and effective health care  
25 liability reforms designed to—

1           (1) improve the availability of health care serv-  
2           ices in cases in which health care liability actions  
3           have been shown to be a factor in the decreased  
4           availability of services;

5           (2) reduce the incidence of “defensive medi-  
6           cine” and lower the cost of health care liability in-  
7           surance, all of which contribute to the escalation of  
8           health care costs;

9           (3) ensure that persons with meritorious health  
10          care injury claims receive fair and adequate com-  
11          pensation, including reasonable noneconomic dam-  
12          ages;

13          (4) improve the fairness and cost-effectiveness  
14          of our current health care liability system to resolve  
15          disputes over, and provide compensation for, health  
16          care liability by reducing uncertainty in the amount  
17          of compensation provided to injured individuals;

18          (5) provide an increased sharing of information  
19          in the health care system which will reduce unin-  
20          tended injury and improve patient care.

21   **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

22          The time for the commencement of a health care law-  
23          suit shall be 3 years after the date of manifestation of  
24          injury or 1 year after the claimant discovers, or through  
25          the use of reasonable diligence should have discovered, the

1 injury, whichever occurs first. In no event shall the time  
2 for commencement of a health care lawsuit exceed 3 years  
3 after the date of manifestation of injury unless tolled for  
4 any of the following:

5 (1) Upon proof of fraud;

6 (2) Intentional concealment; or

7 (3) The presence of a foreign body, which has  
8 no therapeutic or diagnostic purpose or effect, in the  
9 person of the injured person.

10 Actions by a minor shall be commenced within 3 years  
11 from the date of the alleged manifestation of injury except  
12 that actions by a minor under the full age of 6 years shall  
13 be commenced within 3 years of manifestation of injury  
14 or prior to the minor's 8th birthday, whichever provides  
15 a longer period. Such time limitation shall be tolled for  
16 minors for any period during which a parent or guardian  
17 and a health care provider or health care organization  
18 have committed fraud or collusion in the failure to bring  
19 an action on behalf of the injured minor.

20 **SEC. 4. COMPENSATING PATIENT INJURY.**

21 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL  
22 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any  
23 health care lawsuit, nothing in this Act shall limit a claim-  
24 ant's recovery of the full amount of his economic losses,  
25 notwithstanding the limitation in subsection (b).

1 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any  
2 health care lawsuit, the amount of noneconomic damages  
3 recovered may be as much as \$250,000, regardless of the  
4 number of parties against whom the action is brought or  
5 the number of separate claims or actions brought with re-  
6 spect to the same injury.

7 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC  
8 DAMAGES.—For purposes of applying the limitation in  
9 subsection (b), future noneconomic damages shall not be  
10 discounted to present value. The jury shall not be in-  
11 formed about the maximum award for noneconomic dam-  
12 ages. An award for noneconomic damages in excess of  
13 \$250,000 shall be reduced either before the entry of judg-  
14 ment, or by amendment of the judgment after entry of  
15 judgment, and such reduction shall be made before ac-  
16 counting for any other reduction in damages required by  
17 law. If separate awards are rendered for past and future  
18 noneconomic damages and the combined awards exceed  
19 \$250,000, the future noneconomic damages shall be re-  
20 duced first.

21 (d) FAIR SHARE RULE.—In any health care lawsuit,  
22 each party shall be liable for that party's several share  
23 of any damages only and not for the share of any other  
24 person. Each party shall be liable only for the amount of  
25 damages allocated to such party in direct proportion to

1 such party's percentage of responsibility. Whenever a  
2 judgment of liability is rendered as to any party, a sepa-  
3 rate judgment shall be rendered against each such party  
4 for the amount allocated to such party. For purposes of  
5 this section, the trier of fact shall determine the propor-  
6 tion of responsibility of each party for the claimant's  
7 harm.

8 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

9 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
10 ACTUALLY PAID TO CLAIMANTS.—In any health care law-  
11 suit, the court shall supervise the arrangements for pay-  
12 ment of damages to protect against conflicts of interest  
13 that may have the effect of reducing the amount of dam-  
14 ages awarded that are actually paid to claimants. In par-  
15 ticular, in any health care lawsuit in which the attorney  
16 for a party claims a financial stake in the outcome by vir-  
17 tue of a contingent fee, the court shall have the power  
18 to restrict the payment of a claimant's damage recovery  
19 to such attorney, and to redirect such damages to the  
20 claimant based upon the interests of justice and principles  
21 of equity. In no event shall the total of all contingent fees  
22 for representing all claimants in a health care lawsuit ex-  
23 ceed the following limits:

24 (1) 40 percent of the first \$50,000 recovered by  
25 the claimant(s).

1           (2)  $33\frac{1}{3}$  percent of the next \$50,000 recovered  
2       by the claimant(s).

3           (3) 25 percent of the next \$500,000 recovered  
4       by the claimant(s).

5           (4) 15 percent of any amount by which the re-  
6       covery by the claimant(s) is in excess of \$600,000.

7       (b) APPLICABILITY.—The limitations in this section  
8       shall apply whether the recovery is by judgment, settle-  
9       ment, mediation, arbitration, or any other form of alter-  
10      native dispute resolution. In a health care lawsuit involv-  
11      ing a minor or incompetent person, a court retains the  
12      authority to authorize or approve a fee that is less than  
13      the maximum permitted under this section. The require-  
14      ment for court supervision in the first two sentences of  
15      subsection (a) applies only in judicial proceedings.

16   **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

17       In any health care lawsuit involving injury or wrong-  
18      ful death, any party may introduce evidence of collateral  
19      source benefits. If a party elects to introduce such evi-  
20      dence, any opposing party may introduce evidence of any  
21      amount paid or contributed or reasonably likely to be paid  
22      or contributed in the future by or on behalf of the oppos-  
23      ing party to secure the right to such collateral source bene-  
24      fits. No provider of collateral source benefits shall recover  
25      any amount against the claimant or receive any lien or

1 credit against the claimant's recovery or be equitably or  
2 legally subrogated to the right of the claimant in a health  
3 care lawsuit involving injury or wrongful death. This sec-  
4 tion shall apply to any health care lawsuit that is settled  
5 as well as a health care lawsuit that is resolved by a fact  
6 finder. This section shall not apply to section 1862(b) (42  
7 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.  
8 1396a(a)(25)) of the Social Security Act.

9 **SEC. 7. PUNITIVE DAMAGES.**

10 (a) IN GENERAL.—Punitive damages may, if other-  
11 wise permitted by applicable State or Federal law, be  
12 awarded against any person in a health care lawsuit only  
13 if it is proven by clear and convincing evidence that such  
14 person acted with malicious intent to injure the claimant,  
15 or that such person deliberately failed to avoid unneces-  
16 sary injury that such person knew the claimant was sub-  
17 stantially certain to suffer. In any health care lawsuit  
18 where no judgment for compensatory damages is rendered  
19 against such person, no punitive damages may be awarded  
20 with respect to the claim in such lawsuit. No demand for  
21 punitive damages shall be included in a health care lawsuit  
22 as initially filed. A court may allow a claimant to file an  
23 amended pleading for punitive damages only upon a mo-  
24 tion by the claimant and after a finding by the court, upon  
25 review of supporting and opposing affidavits or after a



1 hearing, after weighing the evidence, that the claimant has  
2 established by a substantial probability that the claimant  
3 will prevail on the claim for punitive damages. At the re-  
4 quest of any party in a health care lawsuit, the trier of  
5 fact shall consider in a separate proceeding—

6 (1) whether punitive damages are to be award-  
7 ed and the amount of such award; and

8 (2) the amount of punitive damages following a  
9 determination of punitive liability.

10 If a separate proceeding is requested, evidence relevant  
11 only to the claim for punitive damages, as determined by  
12 applicable State law, shall be inadmissible in any pro-  
13 ceeding to determine whether compensatory damages are  
14 to be awarded.

15 (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
16 AGES.—

17 (1) FACTORS CONSIDERED.—In determining  
18 the amount of punitive damages, if awarded, in a  
19 health care lawsuit, the trier of fact shall consider  
20 only the following:

21 (A) the severity of the harm caused by the  
22 conduct of such party;

23 (B) the duration of the conduct or any  
24 concealment of it by such party;

1 (C) the profitability of the conduct to such  
2 party;

3 (D) the number of products sold or med-  
4 ical procedures rendered for compensation, as  
5 the case may be, by such party, of the kind  
6 causing the harm complained of by the claim-  
7 ant;

8 (E) any criminal penalties imposed on such  
9 party, as a result of the conduct complained of  
10 by the claimant; and

11 (F) the amount of any civil fines assessed  
12 against such party as a result of the conduct  
13 complained of by the claimant.

14 (2) MAXIMUM AWARD.—The amount of punitive  
15 damages, if awarded, in a health care lawsuit may  
16 be as much as \$250,000 or as much as two times  
17 the amount of economic damages awarded, which-  
18 ever is greater. The jury shall not be informed of  
19 this limitation.

20 (c) NO PUNITIVE DAMAGES FOR PRODUCTS IN COM-  
21 PLIANCE WITH FDA STANDARDS.—

22 (1) PUNITIVE DAMAGES.—

23 (A) IN GENERAL.—In addition to the re-  
24 quirements of subsections (a) and (b), punitive  
25 damages may not be awarded against the man-

1 manufacturer or distributor of a medical product, or  
2 a supplier of any component or raw material of  
3 such medical product, on the basis that the  
4 harm to the claimant was caused by the lack of  
5 safety or effectiveness of the particular medical  
6 product involved, unless, the claimant dem-  
7 onstrates by clear and convincing evidence  
8 that—

9 (i) the manufacturer or distributor of  
10 the particular medical product, or supplier  
11 of any component or raw material of such  
12 medical product, failed to comply with a  
13 specific requirement of the Federal Food,  
14 Drug, and Cosmetic Act, section 351 of  
15 the Public Health Service Act, or the regu-  
16 lations promulgated thereunder; and

17 (ii) the harm attributed to the par-  
18 ticular medical product resulted from such  
19 failure to comply with such specific statu-  
20 tory requirement or regulation.

21 (B) RULE OF CONSTRUCTION.—Subpara-  
22 graph (A) may not be construed as establishing  
23 the obligation of the Food and Drug Adminis-  
24 tration to demonstrate affirmatively that a  
25 manufacturer, distributor, or supplier referred

1 to in such subparagraph meets any of the con-  
2 ditions described in such subparagraph.

3 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

4 A health care provider who prescribes, or who dis-  
5 penses pursuant to a prescription, a medical product  
6 approved, licensed, or cleared by the Food and Drug  
7 Administration shall not be named as a party to a  
8 product liability lawsuit involving such product and  
9 shall not be liable to a claimant in a class action  
10 lawsuit against the manufacturer, distributor, or  
11 seller of such product. Nothing in this paragraph  
12 prevents a court from consolidating cases involving  
13 health care providers and cases involving products li-  
14 ability claims against the manufacturer, distributor,  
15 or product seller of such medical product.

16 (3) EXCEPTION.—Paragraph (1) shall not  
17 apply in any health care lawsuit in which—

18 (A) a person knowingly misrepresented to  
19 the Food and Drug Administration information  
20 which is required to be submitted under the  
21 Federal Food, Drug, and Cosmetic Act (21  
22 U.S.C. 301 et seq.) or section 351 of the Public  
23 Health Safety Act (42 U.S.C. 262); or

24 (B) a person made an illegal payment to a  
25 governmental official for the purpose of either

1 (i) securing or maintaining approval, clearance,  
2 or licensure of such medical product or (ii) pre-  
3 venting an enforcement action.

4 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
5 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
6 **SUITS.**

7 (a) IN GENERAL.—In any health care lawsuit, if an  
8 award of future damages, without reduction to present  
9 value, equaling or exceeding \$50,000 is made against a  
10 party with sufficient insurance or other assets to fund a  
11 periodic payment of such a judgment, the court shall, at  
12 the request of any party, enter a judgment ordering that  
13 the future damages be paid by periodic payments.

14 (b) APPLICABILITY.—This section applies to all ac-  
15 tions which have not been first set for trial or retrial be-  
16 fore the effective date of this Act.

17 **SEC. 9. DEFINITIONS.**

18 In this Act:

19 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-  
20 TEM; ADR.—The term “alternative dispute resolution  
21 system” or “ADR” means a system that provides  
22 for the resolution of health care lawsuits in a man-  
23 ner other than through a civil action brought in a  
24 State or Federal court.

1           (2) CLAIMANT.—The term “claimant” means  
2           any person who brings a health care lawsuit, includ-  
3           ing a person who asserts or claims a right to legal  
4           or equitable contribution, indemnity or subrogation,  
5           arising out of a health care liability claim or action,  
6           and any person on whose behalf such a claim is as-  
7           serted or such an action is brought, whether de-  
8           ceased, incompetent, or a minor.

9           (3) COLLATERAL SOURCE BENEFITS.—The  
10          term “collateral source benefits” means any amount  
11          paid or reasonably likely to be paid in the future to  
12          or on behalf of the claimant, or any service, product  
13          or other benefit provided or reasonably likely to be  
14          provided in the future to or on behalf of the claim-  
15          ant, as a result of the injury or wrongful death, pur-  
16          suant to—

17                (A) any State or Federal health, sickness,  
18                income-disability, accident, or workers’ com-  
19                pensation law;

20                (B) any health, sickness, income-disability,  
21                or accident insurance that provides health bene-  
22                fits or income-disability coverage;

23                (C) any contract or agreement of any  
24                group, organization, partnership, or corporation  
25                to provide, pay for, or reimburse the cost of

1 medical, hospital, dental, or income disability  
2 benefits; and

3 (D) any other publicly or privately funded  
4 program.

5 (4) COMPENSATORY DAMAGES.—The term  
6 “compensatory damages” means objectively verifi-  
7 able monetary losses incurred as a result of the pro-  
8 vision of, use of, or payment for (or failure to pro-  
9 vide, use, or pay for) health care services or medical  
10 products, such as past and future medical expenses,  
11 loss of past and future earnings, cost of obtaining  
12 domestic services, loss of employment, and loss of  
13 business or employment opportunities, damages for  
14 physical and emotional pain, suffering, inconven-  
15 ience, physical impairment, mental anguish, dis-  
16 figurement, loss of enjoyment of life, loss of society  
17 and companionship, loss of consortium (other than  
18 loss of domestic service), hedonic damages, injury to  
19 reputation, and all other nonpecuniary losses of any  
20 kind or nature. The term “compensatory damages”  
21 includes economic damages and noneconomic dam-  
22 ages, as such terms are defined in this section.

23 (5) CONTINGENT FEE.—The term “contingent  
24 fee” includes all compensation to any person or per-

1        sons which is payable only if a recovery is effected  
2        on behalf of one or more claimants.

3            (6) ECONOMIC DAMAGES.—The term “economic  
4        damages” means objectively verifiable monetary  
5        losses incurred as a result of the provision of, use  
6        of, or payment for (or failure to provide, use, or pay  
7        for) health care services or medical products, such as  
8        past and future medical expenses, loss of past and  
9        future earnings, cost of obtaining domestic services,  
10       loss of employment, and loss of business or employ-  
11       ment opportunities.

12           (7) HEALTH CARE LAWSUIT.—The term  
13        “health care lawsuit” means any health care liability  
14        claim concerning the provision of health care goods  
15        or services affecting interstate commerce, or any  
16        health care liability action concerning the provision  
17        of health care goods or services affecting interstate  
18        commerce, brought in a State or Federal court or  
19        pursuant to an alternative dispute resolution system,  
20        against a health care provider, a health care organi-  
21        zation, or the manufacturer, distributor, supplier,  
22        marketer, promoter, or seller of a medical product,  
23        regardless of the theory of liability on which the  
24        claim is based, or the number of claimants, plain-  
25       tiffs, defendants, or other parties, or the number of



1 claims or causes of action, in which the claimant al-  
2 leges a health care liability claim. Such term does  
3 not include a claim or action which is based on  
4 criminal liability; which seeks civil fines or penalties  
5 paid to Federal, State, or local government; which is  
6 grounded in antitrust; or in which the dispute is  
7 over the price of health care goods or services.

8 (8) HEALTH CARE LIABILITY ACTION.—The  
9 term “health care liability action” means a civil ac-  
10 tion brought in a State or Federal Court or pursu-  
11 ant to an alternative dispute resolution system,  
12 against a health care provider, a health care organi-  
13 zation, or the manufacturer, distributor, supplier,  
14 marketer, promoter, or seller of a medical product,  
15 regardless of the theory of liability on which the  
16 claim is based, or the number of plaintiffs, defend-  
17 ants, or other parties, or the number of causes of ac-  
18 tion, in which the claimant alleges a health care li-  
19 ability claim.

20 (9) HEALTH CARE LIABILITY CLAIM.—The  
21 term “health care liability claim” means a demand  
22 by any person, whether or not pursuant to ADR,  
23 against a health care provider, health care organiza-  
24 tion, or the manufacturer, distributor, supplier, mar-  
25 keter, promoter, or seller of a medical product, in-

1 including, but not limited to, third-party claims, cross-  
2 claims, counter-claims, or contribution claims, which  
3 are based upon the provision of, use of, or payment  
4 for (or the failure to provide, use, or pay for) health  
5 care services or medical products, regardless of the  
6 theory of liability on which the claim is based, or the  
7 number of plaintiffs, defendants, or other parties, or  
8 the number of causes of action.

9 (10) HEALTH CARE ORGANIZATION.—The term  
10 “health care organization” means any person or en-  
11 tity which is obligated to provide or pay for health  
12 benefits under any health plan, including any person  
13 or entity acting under a contract or arrangement  
14 with a health care organization to provide or admin-  
15 ister any health benefit.

16 (11) HEALTH CARE PROVIDER.—The term  
17 “health care provider” means any person or entity  
18 required by State or Federal laws or regulations to  
19 be licensed, registered, or certified to provide health  
20 care services, and being either so licensed, reg-  
21 istered, or certified, or exempted from such require-  
22 ment by other statute or regulation.

23 (12) HEALTH CARE GOODS OR SERVICES.—The  
24 term “health care goods or services” means any  
25 goods or services provided by a health care organiza-

1       tion, provider, or by any individual working under  
2       the supervision of a health care provider, that relates  
3       to the diagnosis, prevention, or treatment of any  
4       human disease or impairment, or the assessment or  
5       care of the health of human beings.

6           (13) MALICIOUS INTENT TO INJURE.—The  
7       term “malicious intent to injure” means inten-  
8       tionally causing or attempting to cause physical in-  
9       jury other than providing health care goods or serv-  
10      ices.

11          (14) MEDICAL PRODUCT.—The term “medical  
12      product” means a drug, device, or biological product  
13      intended for humans, and the terms “drug”, “de-  
14      vice”, and “biological product” have the meanings  
15      given such terms in sections 201(g)(1) and 201(h)  
16      of the Federal Food, Drug and Cosmetic Act (21  
17      U.S.C. 321) and section 351(a) of the Public Health  
18      Service Act (42 U.S.C. 262(a)), respectively, includ-  
19      ing any component or raw material used therein, but  
20      excluding health care services.

21          (15) NONECONOMIC DAMAGES.—The term  
22      “noneconomic damages” means damages for phys-  
23      ical and emotional pain, suffering, inconvenience,  
24      physical impairment, mental anguish, disfigurement,  
25      loss of enjoyment of life, loss of society and compan-

1       ionship, loss of consortium (other than loss of do-  
2       mestic service), hedonic damages, injury to reputa-  
3       tion, and all other nonpecuniary losses of any kind  
4       or nature.

5           (16) PUNITIVE DAMAGES.—The term “punitive  
6       damages” means damages awarded, for the purpose  
7       of punishment or deterrence, and not solely for com-  
8       pensatory purposes, against a health care provider,  
9       health care organization, or a manufacturer, dis-  
10      tributor, or supplier of a medical product. Punitive  
11      damages are neither economic nor noneconomic  
12      damages.

13          (17) RECOVERY.—The term “recovery” means  
14      the net sum recovered after deducting any disburse-  
15      ments or costs incurred in connection with prosecu-  
16      tion or settlement of the claim, including all costs  
17      paid or advanced by any person. Costs of health care  
18      incurred by the plaintiff and the attorneys’ office  
19      overhead costs or charges for legal services are not  
20      deductible disbursements or costs for such purpose.

21          (18) STATE.—The term “State” means each of  
22      the several States, the District of Columbia, the  
23      Commonwealth of Puerto Rico, the Virgin Islands,  
24      Guam, American Samoa, the Northern Mariana Is-  
25      lands, the Trust Territory of the Pacific Islands, and

1 any other territory or possession of the United  
2 States, or any political subdivision thereof.

3 **SEC. 10. EFFECT ON OTHER LAWS.**

4 (a) VACCINE INJURY.—

5 (1) To the extent that title XXI of the Public  
6 Health Service Act establishes a Federal rule of law  
7 applicable to a civil action brought for a vaccine-re-  
8 lated injury or death—

9 (A) this Act does not affect the application  
10 of the rule of law to such an action; and

11 (B) any rule of law prescribed by this Act  
12 in conflict with a rule of law of such title XXI  
13 shall not apply to such action.

14 (2) If there is an aspect of a civil action  
15 brought for a vaccine-related injury or death to  
16 which a Federal rule of law under title XXI of the  
17 Public Health Service Act does not apply, then this  
18 Act or otherwise applicable law (as determined  
19 under this Act) will apply to such aspect of such ac-  
20 tion.

21 (b) OTHER FEDERAL LAW.—Except as provided in  
22 this section, nothing in this Act shall be deemed to affect  
23 any defense available to a defendant in a health care law-  
24 suit or action under any other provision of Federal law.

1   **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**  
2                   **RIGHTS.**

3           (a) **HEALTH CARE LAWSUITS.**—The provisions gov-  
4   erning health care lawsuits set forth in this Act preempt,  
5   subject to subsections (b) and (c), State law to the extent  
6   that State law prevents the application of any provisions  
7   of law established by or under this Act. The provisions  
8   governing health care lawsuits set forth in this Act super-  
9   sede chapter 171 of title 28, United States Code, to the  
10   extent that such chapter—

11           (1) provides for a greater amount of damages  
12       or contingent fees, a longer period in which a health  
13       care lawsuit may be commenced, or a reduced appli-  
14       cability or scope of periodic payment of future dam-  
15       ages, than provided in this Act; or

16           (2) prohibits the introduction of evidence re-  
17       garding collateral source benefits, or mandates or  
18       permits subrogation or a lien on collateral source  
19       benefits.

20       (b) **PROTECTION OF STATES' RIGHTS AND OTHER**  
21   **LAWS.**—(1) Any issue that is not governed by any provi-  
22   sion of law established by or under this Act (including  
23   State standards of negligence) shall be governed by other-  
24   wise applicable State or Federal law.

25           (2) This Act shall not preempt or supersede any State  
26   or Federal law that imposes greater procedural or sub-

1 stantive protections for health care providers and health  
2 care organizations from liability, loss, or damages than  
3 those provided by this Act.

4 (c) STATE FLEXIBILITY.—No provision of this Act  
5 shall be construed to preempt—

6 (1) any State law (whether effective before, on,  
7 or after the date of the enactment of this Act) that  
8 specifies a particular monetary amount of compen-  
9 satory or punitive damages (or the total amount of  
10 damages) that may be awarded in a health care law-  
11 suit, regardless of whether such monetary amount is  
12 greater or lesser than is provided for under this Act,  
13 notwithstanding section 4(a); or

14 (2) any defense available to a party in a health  
15 care lawsuit under any other provision of State or  
16 Federal law.

17 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

18 This Act shall apply to any health care lawsuit  
19 brought in a Federal or State court, or subject to an alter-  
20 native dispute resolution system, that is initiated on or  
21 after the date of the enactment of this Act, except that  
22 any health care lawsuit arising from an injury occurring  
23 prior to the date of the enactment of this Act shall be  
24 governed by the applicable statute of limitations provisions  
25 in effect at the time the injury occurred.

1   **SEC. 13. SENSE OF CONGRESS.**

2       It is the sense of Congress that a health insurer  
3   should be liable for damages for harm caused when it  
4   makes a decision as to what care is medically necessary  
5   and appropriate.